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IO GROUP, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

) CASE NO.: _____
IO GROUP, INC., a California corporation,)
Plaintiff,)
vs.) COMPLAINT:
JEFFERY RYAN, an individual,)
Defendants.)
) (1) COPYRIGHT INFRINGEMENT;
) (2) FALSE DESIGNATION OF ORIGIN
) (3) STATUTORY UNFAIR
) COMPETITION;
) (4) CALIFORNIA COMMON LAW
) UNFAIR COMPETITION;
) (5) STATUTORY UNAUTHORIZED
) COMMERCIAL USE OF A
) PHOTOGRAPH;
) (6) CALIFORNIA COMMON LAW
) MISAPPROPRIATION OF THE RIGHT
) OF PUBLICITY; AND
) (7) AN ACCOUNTING
)
-----) JURY TRIAL DEMANDED
-----)

INTRODUCTION

1. This is an action by Io Group, Inc. a California corporation, dba Titan Media ("Titan Media"), to recover damages arising from infringement of Titan Media's copyrights in its

1 photographic images by Defendant Jeffery Ryan and to enjoin Defendant from further
2 infringement. Defendant has copied, published and distributed, through several Internet websites,
3 certain Titan Media-owned creative works.
4

5 **THE PARTIES**

6 2. Io Group, Inc. is a California corporation doing business as "Titan Media," with its principal
7 place of business located at 121 Capp Street, Suite 200, San Francisco, California 94110. Titan
8 Media produces markets and distributes adult entertainment products, including Internet website
9 content, DVDs, videotapes, calendars, photographs and other materials.
10

11 3. Defendant Jeffery Ryan is an individual residing in the State of Ohio and is, or was,
12 carrying out the activities and/or causing the injuries and damages complained of herein in this
13 judicial district and elsewhere.
14

15 **JURISDICTION**

16 4. This Court has subject matter jurisdiction over Plaintiff's claims for copyright infringement
17 and related claims pursuant to 17 U.S.C. §§ 101, *et. seq.*, and 28 U.S.C. §§ 1331 and 1338(a).
18

5. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).
19

6. This Court has supplemental jurisdiction over Plaintiff's claims arising under the laws of
20 California pursuant to 28 U.S.C. § 1367(a) because these claims are so related to Plaintiff's claims
21 under Federal Law that they form part of the same case or controversy and derive from a common
22 nucleus of operative fact.
23

7. The Court has personal jurisdiction over Defendant. On information and belief, Defendant
24 solicits, transacts, and is doing business within the State of California; has committed unlawful
25 and tortuous acts both within and outside the State of California causing injury in California; and
26
27

1 is regularly doing or soliciting business or engaging in a persistent course of conduct in the State.

2 Plaintiff's claims arise out of the conduct that gives rise to personal jurisdiction over Defendant.

3 **INTRADISTRICT ASSIGNMENT**

4
5 8. Pursuant to United States District Court, Northern District of California Civil Local Rule 3-
6 12 this case should be assigned to Judge Ronald J. Whyte in the San Jose division for the reasons
7 outlined in the accompanying Notice of Related Case.

8 **VENUE**

9 9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2), 1392 and 1400(a).

10 **FACTS COMMON TO ALL CLAIMS**

11 **Plaintiff Titan Media Owns Federally Registered Copyrights of Various Photographs**

12 10. Plaintiff Titan Media produces and distributes erotica, audiovisual works and adult-
13 oriented content in photographic, VHS, DVD and other formats. Plaintiff uses promotional
14 photographs to assist in the marketing of its audiovisual works. Additionally, Plaintiff maintains a
15 website by and through which high-resolution versions of such promotional photographs and other
16 content can be viewed by individuals who pay a monthly subscription fee.

17 11. Plaintiff designs, develops and produces audiovisual works and still photography that is
18 among the highest quality in the adult industry.

19 12. Plaintiff has won numerous awards for it's high quality work, beginning with an award for
20 Best Gay Video in its first year in existence (1995) through this year (2002) when Plaintiff
21 received awards for Best Gay DVD and Best Gay Video. Plaintiff has received awards for Best
22 Cinematography, Best Videography, Best Art Direction, and Best Editing. Plaintiff is recognized
23 throughout the industry as one of the highest quality producers of gay erotica.

1 13. Plaintiff produced, wholly owns and holds copyright to the following audiovisual works
2 and all associated photographic and graphic materials: Chapters (PA 984-694), Eruption (PA990-
3 739 and PA 1-080-262), Fallen Angel (PA 871-486 and PA 1-077-965), Fallen Angel II (PA 984-
4 676 and PA 1-077-969), Fallen Angel III (PA 992-996), Fallen Angel IV (PA 1-065- 767), Island
5 Guardian (PA 984-693 and PA 1-077-968), Naked Escape (PA 871-481 and PA 1-080-259), Swell
6 (PA 765-056 and PA 1-086-864), Titan Express (PA 1-041-382 and PA 1-080-258), and Tourist
7 Trade (PA 860-304).

8
9 14. True and correct copies of the Certificates of Registration for the above-referenced
10 audiovisual works are attached hereto as Exhibit A.

11
12 15. Plaintiff has a general compensation rate of \$2,500 per image as specified in its standard
13 Notice of Terms agreement which is posted on its website.

14 16. All actors and models appearing in Plaintiff's works have assigned to Plaintiff their rights
15 of publicity with regard to their performances in Plaintiff's works.

16
17 Defendants Willfully Infringed Plaintiff's Registered Copyrights

18 17. On information and belief Defendant Ryan owns and operates the websites
19 www.gaycle.com, www.gaycleveland.net, wizofmen.com, and zenwizard-land.com.

20 18. Through a routine inspection of Usegroups and Internet sites, an employee of Plaintiff
21 discovered a number of Titan Media copyrighted images on the Usegroups:
22 alt.binaries.pictures.erotica.male and alt.binaries.pictures.erotica.gaymen. Further review
23 discovered at least ninety of Plaintiff's works posted in such manner.

24
25 19. Usegroups are part of a giant public bulletin board system on the Internet for news and
26 electronic mail. Users post messages, news articles, digital photographs and video clips. Other
27 users can then respond to messages, and view or download articles, photographs or video clips.

1 There are various types of Usenet groups including comp (about computers), news (about
2 newsgroups), rec (on sports and hobbies), sci (science), soc (social), talk (discussions), misc
3 (miscellaneous), and alt (alternative newsgroups).
4

5 20. On information and belief, Defendant affixed www.wizofmen.com and gaycleveland.net
6 marks onto Plaintiff's copyright protected works and posted the manipulated works on Usenet
7 groups in order to direct Internet users to websites he owned and operated.
8

9 21. Users directed to Defendant's aforementioned sites could view additional Plaintiff-owned
10 images after purchasing an identification number from one of several third party adult verification
11 systems.
12

13 22. On information and belief, Defendant received various commissions and incentives from
14 the third party adult verification systems.
15

16 23. On information and belief, Defendant received additional revenue through the websites in
17 the form of advertising fees and commissions on sales of goods.
18

19 24. At various times Defendant made available for viewing at least twenty-six Plaintiff-owned
20 images.
21

22 FIRST CAUSE OF ACTION

23 (Copyright Infringement – 17 U.S.C. §501)

24 25. Plaintiff repeats and incorporates by this reference each and every allegation set forth in
26 paragraphs 1 through 24, inclusive.
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28 26. Plaintiff is the sole owner of the photographs and audiovisual works at issue and of all
corresponding copyrights and Certificates of Registration.
29

1 27. Defendant infringed Plaintiff's copyrights by copying, publishing and distributing
2 Plaintiff's creative works on various Usegroups and on the websites www.gaycle.com,
3 www.gaycleveland.net, wizofmen.com, and zenwizard-land.com without approval or
4 authorization from Plaintiff.

5 28. Defendant's conduct has been willful within the meaning of the Copyright Act. At a
6 minimum, Defendants acted with willful blindness to and in reckless disregard of Plaintiff's
7 registered copyrights.

8 29. As a result of his wrongful conduct, Defendant is liable to Plaintiff for copyright
9 infringement pursuant to 17 U.S.C. § 501. Plaintiff has suffered, and will continue to suffer,
10 substantial losses, including but not limited to damage to its business reputation and goodwill.
11 Plaintiff is entitled to recover damages, which include its losses and any and all profits Defendant
12 has made as a result of his wrongful conduct. 17 U.S.C. § 504. Alternatively, Plaintiff is entitled
13 to statutory damages under 17 U.S.C. § 504(c).
14

15 30. In addition, because Defendant's infringement has been willful, the award of statutory
16 damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).
17

18 31. Plaintiff is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order
19 impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Plaintiff has no
20 adequate remedy at law for Defendant's wrongful conduct because, among other things, (a)
21 Plaintiff's copyrights are unique and valuable property which have no readily determinable market
22 value, (b) Defendant's infringement harms Plaintiff's business reputation and goodwill such that
23 Plaintiff could not be made whole by any monetary award, and (c) Defendant's wrongful conduct,
24 and resulting damage to Plaintiff is continuing.
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1 32. In addition, Plaintiff is entitled to recover its attorneys' fees and costs of suit pursuant to
2 17 U.S.C. § 505.
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5 **SECOND CAUSE OF ACTION**

6 **(False Designation of Origin, False Description and False Representation**

7 33. Plaintiff repeats and incorporates by this reference each and every allegation set forth in
8 paragraphs 1 through 32, inclusive.

9 34. Defendant's wrongful conduct includes affixing his mark on Plaintiff's works, thereby
10 willfully attempting to confuse the public as to the origin of the works and creating the misleading
11 and incorrect impression that he produced the works rather than Plaintiff.
12

13 35. Alternatively, Defendant willfully calculated his actions to create the misleading and
14 incorrect impression that Plaintiff sponsored or approved of his websites and/or the goods and
15 services offered therein.
16

17 36. Defendant's use, advertising, marketing, offering, or distribution of falsely labeled material
18 constitutes (a) false designation of origin, (b) false description and (c) false representation that the
19 works either belonged to Defendant or were sponsored by Plaintiff, all in violation of the Lanham
20 Trademark Act, set forth at 15 U.S.C. §1125(a).
21

22 37. As a result of Defendant's use, marketing, offering, and distribution of Plaintiff's works
23 with misleading and incorrect designation of origin, Plaintiff has suffered and will continue to
24 suffer damage and losses, including but not limited to, irreparable injury to its business reputation
25 and goodwill. Plaintiff is entitled to injunctive relief and to an order compelling the impounding
26 of all falsely labeled works being used, offered, marketed, or distributed by Defendant. Plaintiff
27 has no adequate remedy at law for Defendant's wrongful conduct because, among other things, (a)
28

1 Plaintiff's works are unique and valuable property which have no readily-determinable market
2 value, (b) Defendant's use, marketing, or distribution of incorrectly designated works constitutes
3 harm to Plaintiff's business reputation and goodwill such that Plaintiff could not be made whole
4 by any monetary award, and (c) Defendant's wrongful conduct, and the resulting damage to
5 Plaintiff is continuing.

7 **THIRD CAUSE OF ACTION**

8 **(Unfair Competition – Cal. Bus. & Prof. Code § 17200 et seq.)**

9 38. Plaintiff repeats and incorporates by this reference each and every allegation set forth in
10 paragraphs 1 through 37, inclusive.

12 39. The acts and conduct of Defendant, as alleged above in this Complaint constitute unfair
13 competition as defined by California Business & Professions Code § 17200 et seq.

14 40. The acts and conduct of Defendant, are likely to cause confusion and mistake among
15 customers, end users, and the public as to the origin or association of Defendant's infringing Titan
16 Media photographs and audiovisual works. The acts and conduct of Defendant are likely to lead
17 the public to conclude incorrectly that Defendant produced or own the infringing photographs and
18 audiovisual works. Alternatively, the acts and conduct of Defendant are likely to lead the public
19 to conclude incorrectly, that the posting and selling of the infringing photographs and audiovisual
20 works are sponsored or authorized by Plaintiff. Moreover, the acts and conduct of Defendant
21 render Plaintiff's photographic and audiovisual works readily available to the public in an easily
22 downloadable format, thereby enabling further distribution and further harm to Plaintiff.

25 41. As a result, Defendant should be required to disgorge any profit or gain as a result of said
26 wrongful activity.

28 **FORTH CAUSE OF ACTION**

(California Common Law Unfair Competition)

42. Plaintiff repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 41, inclusive.

43. The acts and conduct of Defendant, as alleged above in this Complaint constitute unfair competition pursuant to the common law of California.

44. Defendant's conduct as alleged above has damaged and will continue to damage Plaintiff's goodwill and reputation and has resulted in losses to Plaintiff and illicit gain of profit to Defendant in an amount unknown at the present time.

FIFTH CAUSE OF ACTION

(Unauthorized Commercial Use of a Photograph – Cal. Civ. Code § 3344)

45. Plaintiff repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 42, inclusive.

46. Plaintiff's copyrighted works embody images of actors who executed written agreements with Plaintiff under which Plaintiff became the exclusive proprietor of the actors' rights of publicity of the their images as embodied in Plaintiff's works.

47. Plaintiff has at all times exclusively administered all rights of publicity in respect of those images from within San Francisco, California.

48. Defendant has infringed the rights of publicity owned and controlled by Plaintiff by reproducing the persona of the actors appearing in the subject works for commercial gain without Plaintiff's consent.

49. As a direct and proximate result of Defendant's conduct as aforesaid, Plaintiff has been damaged by lost income in an amount to be determined at trial.

50. Defendant acted deliberately to injure Plaintiff and otherwise in conscious disregard of Plaintiff's rights. Further, Defendant performed these acts, or otherwise authorized, ratified or had knowledge of them and thereby acted in conscious disregard of Plaintiff's rights. Defendant's conduct as alleged above has damaged and will continue to damage Plaintiff's goodwill and reputation and has resulted in losses to Plaintiff and illicit gain of profit to Defendant in an amount unknown at the present time.

51. Defendant's conduct justifies an award of exemplary or punitive damages in an amount sufficient to punish Defendant and to make an example of him to others as provided for in Cal. Civ. Code § 3344(a).

52. Plaintiff is entitled to recover its attorneys' fees and costs of suit pursuant to Cal. Civ. Code § 3344(a).

SIXTH CAUSE OF ACTION

(California Common Law Misappropriation of the Right of Publicity)

53. Plaintiff repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 52, inclusive.

54. The acts and conduct of Defendant as alleged above in this Complaint constitute a misappropriation of the Right of Publicity pursuant to the common law of California.

55. Defendants' conduct as alleged above has damaged and will continue to damage Plaintiff's goodwill and reputation and has resulted in losses to Plaintiff and illicit gain of profit to Defendant in an amount unknown at the present time.

SEVENTH CAUSE OF ACTION

(Accounting)

56. Plaintiff repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 55, inclusive.

57. Plaintiff is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to recover any and all profits of Defendant that are attributable to the acts of infringement herein described.

58. Plaintiff is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to actual damages or statutory damages sustained by virtue of Defendants' acts of infringement.

59. The amount of money due from Defendant to Plaintiff is unknown to Plaintiff and cannot be ascertained without a detailed accounting by Defendant of the precise number of subscribers to Defendant's website, the number of "hits" to the website and various pages therein and the value of various advertising revenues and incentives.

60. Accordingly, Plaintiff is entitled to and hereby demands a full accounting from Defendants.

JURY DEMAND

61. Plaintiff hereby demands a jury trial in this case.

PRAYER

WHEREFORE, Plaintiff Titan Media respectfully requests judgment as follows:

(1) That the Court enter a judgment against Defendant that he has:

- a. willfully infringed Plaintiff's rights in federally registered copyrights under 17 U.S.C. § 501;
- b. committed and are committing acts of false designation of origin, false or misleading description of fact, and false or misleading representation as described in 15 U.S.C. § 1125(a) to the harm of Plaintiff;

- c. engaged in unfair competition in violation of California common law and California Bus. & Prof. Code § 17200 et. seq. ;
- d. willfully violated Plaintiff's rights of publicity in violation of California common law and California Civ. Code § 3344; and
- e. otherwise injured the business reputation and business of Plaintiff by Defendants' acts and conduct set forth in this Complaint.

(2) That the Court issue injunctive relief against Defendant, and that Defendant, his agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with Defendant, be enjoined and restrained from copying, posting or making any other infringing use or infringing distribution of audiovisual works, photographs or other materials protected by Plaintiff Titan Media's registered copyrights;

(3) That the Court enter an order of impoundment pursuant to 15 U.S.C. § 1116(a)(d)(1)(A), 17 U.S.C. §§ 503 and 509(a), and 28 U.S.C. § 1651(a) impounding all infringing copies of Plaintiff's audiovisual works, photographs or other materials, which are in Defendant's possession or under their control;

(4) That the Court enter an order requiring a full and complete accounting of all amounts due and owing to Plaintiff as a result of Defendant's illegal activities;

(5) That the Court order Defendant to pay Plaintiff's general, special, actual and statutory damages as follows:

- a. Plaintiff's damages and Defendant's profits pursuant to 17 U.S.C. § 504(b), or in the alternative, enhanced statutory damages pursuant to 17 U.S.C. § 504(c)(2), for Defendant's willful infringement of Plaintiff's copyrights;

1 b. Plaintiff's damages and Defendant's profits pursuant to Cal. Civ. Code § 3344 or in the
2 alternative statutory damages pursuant to Cal. Civ. Code § 3344; and

3 c. Plaintiff's damages and Defendant's profits pursuant to California common law and
4 disgorgement pursuant to California Bus. & Prof. Code § 17200 et seq.

5 (6) That the Court order Defendant to pay punitive damages pursuant to Cal. Civ. Code §
6 3344.

7 (7) That the Court order Defendant to pay Plaintiff both the costs of this action and the
8 reasonable attorney's fees incurred by it in prosecuting this action pursuant to 17 U.S.C. § 504,
9 California Bus. & Prof. Code § 17200 et. seq., and Cal. Civ. Code § 3344(a).

10 (8) That the Court grant to Plaintiff such other and additional relief as is just and proper.

11
12 Dated: *October 23, 2002*

13
14 Respectfully submitted,

15
16 /s/ *D. Gill Sperlein*

17
18 GILL SPERLEIN,
19 Attorney for Plaintiff